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Via Electronic Mail Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte Communication
Wireless Access Charges – WT Docket No. 01-316

Dear Ms. Dortch:

Sprint Corporation below discusses the recent D.C. Circuit decision vacating the Commission's *CLEC Access Charge Declaratory Order*.[1] That decision involved a very different set of facts than those involved in the CMRS access charge dispute and the central issue that the court addressed (the second clause of Section 201(a)) has no direct bearing on this proceeding.

At issue in the CLEC access charge appeal was whether Section 201(a) imposes a duty on an interexchange carrier ("IXC") to accept traffic from a competitive local exchange carrier ("CLEC") when the IXC does not want to receive the traffic because it thinks that the CLEC's access charges are too high. The D.C. Circuit held that the Commission had misinterpreted Section 201(a), ruling that:

> [I]f the FCC wants to compel AT&T to establish a through route with another carrier, then the FCC must follow the procedures specified in the second clause of § 201(a). In ruling that AT&T was obligated to purchase access services from CLECs, the FCC sought – without first having followed the procedures specified in the second clause of § 201(a) – to compel AT&T to establish a through route.[2]

In the CMRS access proceeding, AT&T is not being compelled to establish through routes. Indeed, AT&T continues to voluntarily route traffic to CMRS carriers. Instead, AT&T maintains that CMRS carriers are prohibited from charging AT&T for those services under any circumstances. The second clause of Section 201(a), which the appellate court found determinative in its CLEC ruling, thus has no bearing to the CMRS access charge issue, and indeed AT&T has never argued to the contrary.

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[1] *See AT&T Corp.* v. *FCC,* No. 01-1467 (D.C. Cir., June 14, 2002), *vacating CLEC Access Charge Declaratory Ruling*, 16 FCC Rcd 19158 (Oct. 22, 2001).

[2] Slip opinion (Pacer version) at 5.

Sprint PCS simply seeks to be paid for services provided at the request of AT&T. It filed its collection suit under *quantum meruit* only after AT&T continued to send to Sprint its traffic *after* Sprint repeatedly asked that AT&T pay its costs of call termination. The Commission has recognized *quantum meruit* as creating a legal obligation for carriers to pay for services rendered.[3]

Sprint is not imposing a unilateral duty on AT&T. AT&T continues to have the right to make a business decision as to whether it will use Sprint's service. In fact, AT&T has continued to send its traffic to Sprint even though it concedes that today and during the complaint period it could have "block[ed] terminating calls to Sprint PCS by modifying its routing tables to route all calls placed to Sprint PCS's NPA-NXX assignments to a message informing callers that AT&T does not interconnect with Sprint PCS."[4] AT&T has simply taken the untenable legal position that Sprint is prohibited from seeking any compensation whatsoever from AT&T for the service it provides AT&T.

Indeed it would be ironic if AT&T argued that AT&T can refuse to accept traffic from a CLEC that imposes allegedly excessive access charges, while arguing that Sprint, which cannot block traffic from AT&T, must accept AT&T's traffic without any compensation whatsoever.

There can be no significant question over the right of Sprint PCS to charge for access services. The Commission, in 1994, prohibited CMRS carriers from tariffing interstate access charges and, in 1996, reiterated that its existing policy is to forbear from regulating CMRS carriers' access charges.[5] Such detariffing and forbearance would not have been necessary had CMRS carriers been prohibited from charging for access in the first place.

The federal court stayed Sprint's collection action for 11 months, until June 24, 2002, stating: "If, by that time, the FCC has not ruled on the referred issues, this Court will proceed with the instant litigation."[6] Sprint encourages the Commission to issue a decision that affirms that CMRS carriers may charge for providing access services by the Court's deadline.

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[3] *See, e.g., Total Communications* v. *AT&T*, 16 FCC Rcd 5726 ¶ 37 (March 13, 2001)(FCC rejects AT&T's argument that it is entitled to free access services); United *Telephone Companies,* 77 F.C.C.2d 1015, 1017 ¶ 4 (1980); *ENFIA Reconsideration Order,* 71 F.C.C.2d 440, 458 ¶ 48 (1979); *ITT World Communications* v. *Western Union,* 45 F.C.C.2d 718 (1974). *Quantum meruit* is an "equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor." *Interstate, Interexchange Marketplace,* 12 FCC Rcd 15014, 15035 n.20 (1997).

[4] AT&T Ex Parte, WT Docket No. 01-316, at 2 (May 8, 2002). Although some originating traffic is also involved in this case, AT&T has acknowledged this is a very small percentage. *See,* Suggestions in Support of Motion of AT&T for Referral of Issues to the FCC under the Doctrine of Primary Jurisdiction, at 5 n.3 (April 2, 2001).

[5] *See, e.g.,* 47 C.F.R. § 20.15(d); *Second CMRS Order,* 9 FCC Rcd 1411, 1480 ¶ 179 (1994)(FCC "forbear[s] from requiring or permitting CMRS providers to file tariffs for interstate access service."); *LEC-CMRS Interconnection NPRM,* 11 FCC Rcd 5020, 5075-76 ¶ 117 (1996)(FCC refers to "our existing policy of forbearing from regulating CMRS providers' interstate access charges.").

[6] *Sprint Spectrum* v. *AT&T,* 168 F. Supp. 2d at 1102.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being electronically filed with your office. Please associate this letter with the file in the above-captioned proceeding.

Respectfully submitted,

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